

§ 120.620

THE SBA GUARANTEE OF A CERTIFICATE

§ 120.620 SBA guarantee of a Pool Certificate.

(a) *Extent of Guarantee.* SBA guarantees to a Registered Holder the timely payment of principal and interest installments and any prepayment or other recovery of principal to which the Registered Holder is entitled. If the Borrower of a loan in a Pool backing the Certificates does not make a required installment payment, SBA, through the FTA, will make advances to maintain the schedule of interest and principal payments to the Registered Holders.

(b) *SBA guarantee backed by full faith and credit.* SBA's guarantee of the Pool Certificate is backed by the full faith and credit of the United States.

§ 120.621 SBA guarantee of an Individual Certificate.

(a) *Extent of SBA guarantee.* With respect to Individual Certificates, SBA guarantees to purchase from the Registered Holder the guaranteed portion of the loan for an amount equal to the unpaid principal and accrued interest due as of the date of SBA's purchase, less deductions for applicable fees. Unlike the SBA guarantee with respect to pooled loans, SBA does not guarantee timely payment on Individual Certificates.

(b) *What triggers the SBA guarantee.* SBA's guarantee to the Registered Holder may be called upon when:

(1) The Borrower remains in uncured default for 60 days on payments of principal or interest due on the note;

(2) The Lender fails to send to the FTA on a timely basis payments it received from the Borrower; or

(3) The FTA fails to send to the Registered Holder on a timely basis any payments it has received from the Lender.

(c) *Full faith and credit.* SBA's guarantee to the Registered Holder is backed by the full faith and credit of the United States.

13 CFR Ch. I (1-1-10 Edition)

POOL ASSEMBLERS

§ 120.630 Qualifications to be a Pool Assembler.

(a) *Application to become Pool Assembler.* The application to become a Pool Assembler is available from the D/FA. In order to qualify as a Pool Assembler, an entity must send the application to the D/FA, with an application fee, and certify that it:

(1) Is regulated by the appropriate agency as defined in section 3(a)(34)(G) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(34)(G));

(2) Meets all financial and other applicable requirements of its regulatory authority and the Government Securities Act of 1986, as amended (Pub. L. 99-571, 100 Stat. 3208);

(3) Has the financial capability to assemble acceptable and eligible guaranteed loan portions in sufficient quantity to support the issuance of Pool Certificates; and

(4) Is in good standing with SBA (as the D/FA determines), the Office of the Comptroller of the Currency ("OCC") if it is a national bank, the Federal Deposit Insurance Corporation if it is a bank not regulated by the OCC, or the National Association of Securities Dealers if it is a member.

(5) For any pool assembler that is an SBA Lender, that the SBA Lender has satisfactory SBA performance, as determined by SBA in its discretion. The Lender's Risk Rating, among other factors, will be considered in determining satisfactory SBA performance. Other factors may include, but are not limited to, on-site review/examination assessments, historical performance measures (like default rate, purchase rate and loss rate), loan volume to the extent that it impacts performance measures, and other performance related measurements and information (such as contribution toward SBA mission).

(b) *Approval by SBA.* An entity may not submit Pool applications to the FTA until SBA has approved the application to become a Pool Assembler.

(c) *Conduct of business by Pool Assembler.* An entity continues to qualify as a Pool Assembler so long as it:

(1) Meets the eligibility standards in paragraph (a) of this section;

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(2) Conducts its business in accordance with SBA regulations and accepted securities or banking industry practices, ethics, and standards; and

(3) Maintains its books and records in accordance with generally accepted accounting principles or in accordance with the guidelines of the regulatory body governing its activities.

[61 FR 3235, Jan. 31, 1996, as amended at 73 FR 75517, Dec. 11, 2008]

§ 120.631 Suspension or termination of Pool Assembler.

(a) *Suspension or termination.* The D/FA may suspend a Pool Assembler from operating in the Secondary Market for up to 18 months or terminate its status as a Pool Assembler, if the Pool Assembler (and/or its Associates):

(1) Does not comply with any of the requirements in § 120.630 (a) and (c);

(2) Has been indicted or otherwise formally charged with, or convicted of, a misdemeanor or felony;

(3) Has received an adverse civil judgment that it has committed a breach of trust or a violation of a law or regulation protecting the integrity of business transactions or relationships;

(4) Has not formed a Pool for at least three years; or

(5) Is under investigation by its regulating authority for activities which may affect its fitness to participate in the Secondary Market.

(b) *Suspension procedures.* The D/FA shall notify a Pool Assembler by certified mail, return receipt requested, of the decision to suspend and the reasons therefore at least 10 business days prior to the effective date of the suspension. The Pool Assembler may appeal the suspension made under this section pursuant to the procedures set forth in part 134 of this chapter. The action of the D/FA shall remain in effect pending resolution of the appeal.

(c) *Notice of termination.* In order to terminate a Pool Assembler, the D/FA must issue an order to show cause why the SBA should not terminate the Pool Assembler's participation in the Secondary Market. The Pool Assembler may appeal the termination made under this section pursuant to procedures set forth in part 134 of this chapter. The action of the D/FA shall re-

main in effect pending resolution of the appeal.

MISCELLANEOUS PROVISIONS

§ 120.640 Administration of the Pool and Individual Certificates.

(a) *FTA responsibility.* The FTA has the responsibility to administer each Pool or Individual Certificate. It shall maintain a registry of Registered Holders and other information as SBA requires.

(b) *Self-liquidating.* Each Pool or individual guaranteed portion of a loan in the Secondary Market is self-liquidating because of Borrower payments or prepayments, redemption by SBA, and/or payments by SBA or the Lender after default by the Borrower. Substitution of the guaranteed portions of existing loans for defaulted loans is not permitted.

(c) *SBA's right to subrogation.* If SBA pays a claim under a guarantee with respect to a Certificate issued under this subpart, it must be subrogated fully to the rights satisfied by such payment.

(d) *SBA ownership rights not limited.* No Federal, State or local law can preclude or limit the exercise by SBA of its ownership rights in the portions of loans constituting the Pool against which the Certificates are issued.

§ 120.641 Disclosure to purchasers.

(a) *Information to purchaser.* Prior to any sale, the Pool Assembler, Registered Holder of an Individual Certificate, or any subsequent seller must disclose to the purchaser, verbally or in writing, information on the terms, conditions, and yield as described in the SBA Secondary Market Program Guide.

(b) *Information on transfer document.* The seller must provide the same information described in paragraph (a) of this section in writing on the transfer document when the seller submits it to the FTA. After the sale of an Individual Certificate, the FTA will provide the disclosure information in writing to the purchaser.

(c) *Information in prospectus.* If the Registered Holder is a trust, investment Pool, mutual fund or other security, it must disclose the information